

D. E. BAILEY

IBLA 81-68

Decided August 25, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring the Duke, Minnie, and Violet mining claims abandoned and void. M MC 38079 through M MC 38081.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Recordation

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management Office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

2. Notice: Generally -- Regulations: Generally

Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto.

APPEARANCES: D. E. Bailey, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

D. E. Bailey appeals from the decision of the Montana State Office, Bureau of Land Management (BLM), dated September 29, 1980, declaring the Duke, Minnie, and Violet mining claims (M MC 38079 through M MC 38081) abandoned and void because of his failure to comply with recording requirements under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) and (c) (1976), and the regulations in 43 CFR Subpart 3833.

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), and the pertinent regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located prior to October 21, 1976, shall, on or before October 22, 1979, file, with BLM, evidence of annual assessment work performed during the previous assessment year, or alternatively, a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claims under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). The record shows that the claims were located on September 1, 1970, and that location notices and other documents were submitted to BLM October 9, 1979. Appellant failed to file evidence of annual assessment work or a notice of his intention to hold the claims as required by FLPMA, supra.

When appellant failed to file for calendar year 1979 an affidavit of assessment work or a notice of his intention to hold the claims, despite the fact that appellant had filed notices of location, BLM properly held the claims to have been abandoned and declared them void. Don Sagmoen, 50 IBLA 84 (1980); Victor DeLange, 48 IBLA 222 (1980); Juan Munoz, 39 IBLA 72 (1979); and Public Service Company of Oklahoma, 38 IBLA 193 (1978).

[2] In his statement of reasons appellant asserts that he was unaware and without notice of the requirement of filing evidence of assessment work or notice of his intention to hold the claims.

The fact that appellant may have been unaware of the recordation requirements, while unfortunate, does not excuse him from compliance. Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Don Sagmoen, supra; and A. J. Grady, 48 IBLA 218 (1980). This Board has no authority to excuse a lack of compliance with the statutes and duly promulgated regulations. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glen J. McCrorey, 46 IBLA 355 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

